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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,293	08/02/2001	Rudolf Ehrmaier	951/50202	3899

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EXAMINER

KRAMER, DEVON C

ART UNIT PAPER NUMBER

3683

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/920,293

**Applicant(s)**

EHRMAIER ET AL.

**Examiner**

Devon C Kramer

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 5, 6, 8 and 9 is/are rejected.
- 7) ☒ Claim(s) 3 4 7 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2) Claims 1, 2, 8, and 9 rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 4561527 to Nakamoto et al. in view of admitted prior art disclosed in paragraph [0005] on pg. 2 of the instant application.

Re: claims 1 and 8. Nakamoto et al. disclose a system comprising: a motor Vehicle, an automatically activated parking brake system 4 for the motor vehicle including: an electronic control unit 25 for automatically activating a parking brake in dependence on at least one specified operating parameter (angle of inclination as disclosed in col. 8 lines 5-21) of the motor vehicle, and means for arbitrarily preventing the electronic control unit from automatically activating the parking brake when the activation would otherwise occur based on the at least one specified operating parameter as disclosed in col. 6 lines 34-41, the means being operatively coupled with the electronic control unit as shown in figure 2A. Please note that the switch F, 22, can be part of the means for arbitrarily preventing activation.

Nakamoto et al. lack the limitation of the motor vehicle specifically being startable without a mechanical key.

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The admitted prior art disclosed in paragraph [0005] on pg. 2 of the instant application teaches that the use of a motor vehicle startable without a mechanical key is old and well known in the art. Particularly, in lines 2-4 of paragraph [0005] Applicant teaches that an electronic authorization verification device may be a functional equivalent of a mechanical key.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the motor vehicle of Nakamoto et al. to have included a vehicle that is startable without a mechanical key, as taught by the admitted prior art, in order to provide a possible means of reducing vehicle theft through the use of a replacement vehicle start-up means that cannot be as easily and readily reproduced.

Re: claims 2 and 9. Nakamoto et al., as modified, show in figure 2A wherein the means for arbitrarily preventing the automatic activation of the parking brake comprises a key button in the form of an OFF switch 15,15a coupled with the electronic control unit, the key button being directly manually actuated via the driver to arbitrarily prevent the automatic activation of the parking brake by the electronic control unit (while being on a particular angle of inclination).

3) Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakamoto et al. in view of admitted prior art as applied to claims 1 and 2 above, and further in view of WIPO 00/37836.

Nakamoto et al., as modified, describe the invention substantially as set forth

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above, but do not include the limitation of the at least one operating parameter being a shutting off of an internal combustion engine of a motor vehicle.

WIPO 00/37836 teaches in lines 13-14 of the abstract the use of automatically activating the parking brakes when an internal combustion engine is turned off. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the at least one specified operating parameter of Nakamoto et al., as modified, to have included the shutting off of an internal combustion engine, as taught by WIPO 00/37836, in order to provide an alternate means of automatically applying the brakes under emergency conditions and/or as an alternate means of safeguarding against operator forgetfulness.

#### ***Allowable Subject Matter***

4) Claims 3, 4, 7, and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Although DE-19801064 teaches the use of an electronic authorization verification device having a wireless code transmission, DE-19801064 does not suggest or teach the use of the device in such a capacity that the insertion of the device into a holding shaft arbitrarily prevents the automatic activation of a parking brake.

#### ***Response to Arguments***

5) Applicant's arguments filed 10/1/04 have been fully considered but they are not persuasive. Applicant argues that the combination does not provide for means for

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arbitrarily preventing the control unit from automatically activating the parking brake when the activation would otherwise occur based on the at least one specified operating parameter is also provided. The manual switch 22, 23 along with the switch 15 and 15a can be considered the means for arbitrarily preventing the actuation.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Please note that a secondary reference is not used in the 103 rejections.

### ***Conclusion***

**6) THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devon C Kramer whose telephone number is 703-305-0839. The examiner can normally be reached on Mon-Fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DK

*Robert A. Siconolfi* 11/10/04  
ROBERT A. SICONOLFI  
PATENT EXAMINER